

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1880.—Ordered to be printed.

Mr. TELLER, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 1606.]

The Committee on Claims, to whom was referred the petition of George W. Saulpaic, have considered the same, and report :

This case was before the committee during the second session of the Forty-fifth Congress, and your committee made the following report, which was submitted to the Senate June 12, 1878. Your committee have examined the case and readopt the report, which is as follows :

The Committee on Claims, to whom was referred the petition of George W. Saulpaic, have considered the same, and report :

The petitioner has always been a loyal citizen. Before the war he was a member of a firm who were engaged in building railroad bridges. They built bridges over the Cumberland River at Nashville and Clarksburg, and also some other small bridges. They built a bridge over the Tennessee at Danville, which was completed in November, 1861. Said firm purchased a steamboat called the Alfred Robb in March, 1860, for the transportation of stone, timber, &c., needed in their bridge-building, for which they paid \$3,500. November 21, 1861, said firm dissolved, and petitioner became sole owner of said boat, for which he allowed \$5,500. The rebels had then blockaded the Tennessee River near Fort Henry, below said bridge, and the petitioner was unable to get the boat out of the river. He thereupon began running her as a packet from Danville to Eastport, Miss., a distance of about one hundred and seventy-five miles, and continued this employment until about February 13, 1862, when the rebels seized her near Eastport by force, and used her as a transport until April 10, 1862. The boat was then lying in Little Bear Creek, near Tuscumbia, Ala. The rebel General Walker sent orders to have said boat burned and destroyed, as he was about to evacuate the country. The pilot and clerk, who were loyal men, and who had remained on board while she was in the rebel service, succeeded in evading the order and in running the boat down the stream, where she was concealed at a place called Coyer's Island, until April 22, 1862, when she was taken by the Union gunboat Tyler. She was then taken to Cairo, Ill., and converted into a gunboat, used as such during the war, and was retained by the United States till the summer of 1865, when she was sold at Mound City at the great auction of the Mississippi gunboat squadron, and brought ninety-two hundred dollars. The pilot entered into the government service, and so remained through the war. The clerk and pilot were in the petitioner's employ, he designing to retain them, and paying them, deeming that his boat would be safer, and his chance of securing it better by so doing. They intended to save and secure the boat for the owner, and had actually and completely delivered her from rebel control when she was taken by the United States gunboat. The circumstances of the delivery of the boat are proved by the testimony of the pilot, whose character and trustworthiness are established by the evidence of several United States officers with whom he served. The date and circumstances of the capture fully appear in the report of Lieutenant Gwin, commanding the gunboat Tyler, dated April 23, 1862, and forwarded to the Navy Department by Flag-Officer Foote, by report dated April 26, 1862.

The boat was of eighty tons, in good running order, as appears by the report of the officer who captured her. She is fully described in the other evidence, and we think was worth nearly her original cost when appropriated by the United States. Upon

these facts we hold that all the owner's original right and title to the boat had reverted in him, wholly purged from any effects of the impressment by the rebels. The owner's agents in his behalf and by his authority had completed the escape of the boat from rebel hands. This is not the case of a recapture by our government of property of its loyal citizens which the enemy had taken and put to a military use. It is the case of the full and complete retaking of the property by the owner himself. It is as if the crew of a merchantman captured by the enemy at sea had risen in the night and retaken the vessel. In such case we conceive the title of the owner would completely revert.

The foregoing narrative, so far as relates to the time, place, and circumstances of the taking by the United States of the Alfred Robb, is as well established by public official records as any fact can be. Yet, on the 15th of July, 1862, an information was filed in the district court of the United States for the southern district of Illinois, on the relation of George D. Wise, as informer, against the steamer Alfred Robb, her engines, furniture, tackle, &c., setting forth "that on the 15th day of July, A. D. 1862, there was seized on the Mississippi River, below Cairo, and brought into this district, the steamer Alfred Robb, her engines, furniture, tackle, &c. Said seizure was made by George D. Wise. Said seizure was made for the reason that said property was being used by and with the knowledge and consent of the owner, in aiding the present rebellion, contrary to the act of August 6, 1861, and being so used it has become forfeited." Every one of these allegations was false. The steamer was not seized July 15, 1862, but passed into the possession of the United States in April. She was not seized on the Mississippi River, and was not seized for the reason that she was being used by the knowledge or consent of the owner in aiding the rebellion. Wise never seized her at all. On this libel notice was ordered by publication fourteen days in a newspaper printed in Springfield, and by posting of a copy of the monition near the place of trial.

Wise was a captain and assistant quartermaster with the United States gunboat flotilla, to which the Alfred Robb then belonged.

A writ of attachment and monition issued, directing the marshal to attach the property, &c., and to detain the same until the further order of the court. The marshal made return as follows:

"I hereby certify that on the 7th day of August, A. D. 1862, I have by virtue of this writ attached the within-named steamer Alfred Robb, and made due proclamation.

"D. L. PHILLIPS,

"U. S. Marshal.

"By ISAAC KEYS, Deputy."

To which is annexed the following receipt:

"OFFICE OF GUNBOAT FLOTILLA,

"Cairo, Ill., August 7, 1862.

"Received from D. L. Phillips, United States marshal, southern district of Illinois, one steamboat called Alfred Robb, which has this day been attached by the said David L. Phillips as aforesaid; the said boat being now in the service of the United States as a gunboat on the Western waters, which I agree to deliver as hereafter may be decreed by the judge of the district court aforesaid, if in my power, and consistent with my duty to the United States.

"GEO. D. WISE,

"Captain and Assistant Quartermaster."

Upon these proceedings a decree of sale was made, and the boat bid off by George D. Wise aforesaid, in behalf of the United States, for the sum of \$4,000, of which the court decreed \$12.50 to the clerk, \$96.82 to the marshal, \$100 to the district attorney, and ordered the balance, \$3,790.38, to be divided between the United States and George D. Wise, "the informer herein."

The owner of the boat had no notice or knowledge of the proceedings.

There was no actual proof of the allegations of the information, the record alleging a proclamation for all persons interested to appear, a default, and an order "that the allegations of the libel be taken as true against said property."

A request was made, at the close of the war, to the Quartermaster-General for return of the Alfred Robb, and for such information as the records of the department might show as to the history of these transactions. The following answer was returned:

"QUARTERMASTER GENERAL'S OFFICE,

"Washington, D. C., September 18, 1865.

"SIR: In reply to your letter of the 20th and 31st of July last, with reference to the claim of G. W. Saulpaw, esq., for the return to him of the steamer Alfred Robb, captured by the western gunboat flotilla in February, 1862, in the Tennessee River, you are respectfully informed that this boat was sold by the United States marshal under

a decree of confiscation, having been captured while being used for insurrectionary purposes, and was purchased by the Navy Department, and placed under the charge of Capt. George D. Wise, the then quartermaster in charge of the property and accounts of the flotilla, and by him transferred to the Navy Department, October 1, 1862. You are informed that it is beyond the power of this department to assist you in the settlement of this account.

"You are respectfully referred to D. L. Phillips, esq., United States marshal, Springfield, Ill., for any further information concerning this vessel."

"Very respectfully, your obedient servant,"

"By order Quartermaster-General."

"GEO. D. WISE,

"Colonel in Charge Third D. W."

"R. J. ATKINSON, Esq.,

"Washington, D. C."

The following letter, of which the original is before the committee, is found in the files of that office, which is evidently a first draught of an answer to the foregoing request, from which we think the nature of the transaction can be fairly inferred:

"QUARTERMASTER-GENERAL'S OFFICE,

"Washington, D. C., July 24, 1865.

"SIR: Your letter of July 20th, transmitting evidence, &c., pertaining to claim of G. W. Saulpaw, esq., of Tennessee, for compensation for the steamboat 'Alfred Robb' has been referred to me by the Quartermaster-General.

"You are respectfully informed that the case of the steamer 'Alfred Robb' was duly adjudicated before the United States court for the southern district of Illinois, at Springfield, some time in the year 1863. Due notice was given at that time to claimants to show why she should not be condemned, having been used for insurrectionary purposes, but if any evidence was presented it was not considered satisfactory to the court, as she was condemned and sold by the United States marshal, and, after deducting expenses, one-half (\$1,895.19) went to the informer, and the other half to the United States Treasury.

"Please read the above and see if it is correct.

"How did the 'Robb' come into our possession after the capture? Who paid for her at the sale of confiscation? I do not remember how I came into possession of the \$1,895.19, given me by the marshal. Whom did he get it from? as although I bid the boat in, yet I do not remember to have paid any money for her, and yet received a portion of the sale. If she was sold by the United States marshal and I bid for her, I should have paid the amount and taken a voucher from the marshal. Can you explain all this, for it has entirely passed out of my mind, and I have no time to hunt up papers, and Mr. Blount is away?

"Yours,

"GEO. D. WISE.

"R. J. ATKINSON, Esq.,

"Washington, D. C."

It is evident that the decree of the district court was entirely without foundation in fact, and the findings upon which it proceeded were erroneous. Under these circumstances, if the decree were technically valid until reversed by proper proceeding, and constituted a binding judgment in rem, we do not think the government ought to avail itself of such a technical defense to avoid repayment to the true owner of the proceeds of his property now in the treasury.

But the decree is upon its face wholly erroneous and void.

It is settled that under the act of August 6, 1861, as well as under the later similar acts, there must have been an actual seizure of the property by the marshal to make a decree of confiscation valid. "The marshal must take the property under his actual custody and control." *Pelham v. Way*, 15 Wallace, 202; *Brown v. Kennedy*, *ib.*, 591; *Miller v. United States*, 11 *ib.*, 268; *Pelham v. Rose*, 9 *ib.*, 103. The property must remain in the custody of the marshal, so that he can deliver it to the highest bidder, if it be purchased under the decree of sale. But the return itself sufficiently shows that no such seizure was or could have been made. The gunboat was in the actual service of the United States, in command of an officer who retained possession. The receipt of Captain Wise, made part of the return, declares that "the boat is now in the service of the United States as a gunboat on the western waters, which I agree to deliver as hereafter may be decreed by the judge of the district court aforesaid, *if in my power and consistent with my duty to the United States.*" It clearly was not in his power, or consistent with his duty to make such delivery. This consent or receipt no more transferred the possession of the gunboat from the United States to the marshal, than would a like document executed by the cook or cabin-boy.

We think, therefore, the owner's title to his boat has never been lawfully divested.

The boat cost the firm, of which petitioner was a member, eighty-five hundred dollars in March, 1860. In November, 1861, she was valued at fifty-five hundred dollars in the division of the property of the company. She sold for ninety-two hundred dollars in 1865, at a large and extensively advertised auction sale of such property. But it does not appear that the alterations made in her by the United States may not have enhanced her value. The sale to Wise for four thousand dollars was nothing more than mere form, even if a form were really gone through. The claimant is not entitled to interest nor to compensation for the use of his boat, under the rules uniformly applied to like cases. Under all the circumstances we recommend the payment to the claimant of the sum of seven thousand dollars, and report a bill to that effect.

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